

**Report on:**  
The Definition and Impact of Specialty Hospitals in Kansas

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## Introduction

The 2006 Kansas Legislature included a proviso in the appropriations bill for the Division of Health Policy and Finance (now the Kansas Health Policy Authority – KHPA) that required the agency to:

...conduct a review and study of the issues relating to specialty hospitals and a review and study of the Kansas licensure laws and to prepare and adopt recommendations concerning these issues and, in particular, appropriate definitions for “general hospital,” “special hospital” and “specialty hospital” so that the definitions under the Kansas hospital licensure laws properly define specific categories of hospitals for licensure as necessary to reflect current medical facilities...<sup>1</sup>

The requirements of this proviso reflect issues and concerns that have recently been raised at both local and national levels regarding specialty hospitals. These concerns, as well as the complexity of the associated issues, have led to a significant amount of investigative analysis at the federal level and the number of studies and research articles published over the past three years.

*National concern about the impact of specialty hospitals prompted Congress to include an 18-month moratorium on the approval of specialty hospitals as Medicare providers in the Medicare Modernization Act (MMA) of 2003. The MMA also directed the Secretary of the Department of Health and Human Services (HHS) to complete a study of specialty hospital referral patterns, quality of care, and an evaluation of uncompensated care. In addition, the Medicare Payment Advisory Commission (MedPAC) was directed to prepare a report for Congress on specialty hospitals. (delete this paragraph per recommendation by Ned Holland.)*

*Following the expiration of the moratorium, the Centers for Medicare and Medicaid Services (CMS) suspended the enrollment of specialty hospitals in Medicare until mid-February 2006; however, the suspension was extended six months by the Deficit Reduction Act (DRA) of 2005. The DRA also required HHS/CMS to make another report to Congress examining issues of physician investments and disclosure of such, as well as the provision of care to Medicaid and Medicare patients, and charity care. HHS/CMS presented the final report on August 10, 2006, along with an implementation plan addressing various issues related to specialty hospitals, including Medicare reimbursement changes, sponsoring demonstration projects to promote physician-hospital collaborations, and requiring information from providers on physician investment and compensation arrangements. The suspension of specialty hospital enrollment in Medicare ended at the same time. (delete this paragraph per Ned Holland’s recommendation.)*

## Hospital – Definitions and Licensing

While there is no federal licensure of hospitals, most hospitals participate in the Medicare program, so statutes, regulations, and other guidance concerning Medicare apply to most hospitals. Title 18 of the Social Security Act, which authorizes the Medicare program, defines a hospital as:

...primarily engaged in providing, by or under supervision of physicians, to inpatients (A) diagnostic services and therapeutic services for medical diagnosis, treatment and care of injured, disabled, or sick persons, or (B) rehabilitation services for the rehabilitation of injured, disabled, or sick persons...<sup>2</sup>

Federal regulations governing Medicare specify that any hospital participating in the program “...must be licensed; or (a) approved as meeting standards for licensing established by the agency of the State or locality responsible for licensing hospitals.”<sup>3</sup> In Kansas, that agency is KDHE. The State can impose any licensing requirements it deems appropriate as long as they are not in conflict with any Medicare statutes or regulations.

The Hospital Manual, Publication 10, published by CMS defines a hospital as “...an institution which is primarily engaged

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<sup>1</sup> HB 2968 Sec. 35(i)

<sup>2</sup> Section 1861 of the Social Security Act.

<sup>3</sup> 42 CFR 482.11.

in providing to inpatients, by or under the supervision of physicians”<sup>4</sup> diagnostic, therapeutic, or rehabilitative services. The term “inpatient” is defined as:

...a person who has been admitted to a hospital for bed occupancy for purposes of receiving inpatient hospital services. Generally a person is considered an inpatient if formally admitted as an inpatient with the expectation that he will remain at least overnight and occupy a bed even though it later develops that he can be discharged or transferred to another hospital and does not actually use a hospital bed overnight.<sup>5</sup>

Thus, for the purpose of Medicare reimbursement, the two critical factors in CMS’ designation of a facility as a hospital in Kansas appear to be that it provides care primarily to inpatients and it is licensed as a hospital (though not necessarily a general hospital) by KDHE.

KDHE defines a hospital as “‘general hospital,’ ‘critical access hospital,’ or ‘special hospital’.”<sup>6</sup> A **general** hospital is defined as:

...an establishment with an organized medical staff of physicians; with permanent facilities that include inpatient beds, and with medical services, including physician services, and continuous registered professional nursing services for not less than 24 hours every day, to provide diagnosis and treatment for patients who have a *variety* of medical conditions.<sup>7</sup> [*emphasis added*]

A **critical access** hospital (CAH) is defined in Kansas statute<sup>8</sup> as a member of a rural health network that provides limited inpatient care (25 beds or less), provides 24-hour nursing care whenever there are inpatients, and may use physician assistants, clinical nurse specialist or nurse practitioners – under physician supervision – to provide inpatient care.

There is no category in the Kansas hospital licensing statute for a “specialty” hospital; however, a **special** hospital is defined, by KDHE, as:

...an establishment with an organized medical staff of physicians; with permanent facilities that include inpatient beds; and with medical services, including physician services, and continuous registered professional nursing services for not less than 24 hours every day, to provide diagnosis and treatment for patients who have *specific* medical conditions.<sup>9</sup> [*emphasis added*]

For KDHE licensure, the primary distinction between a general hospital and a special hospital is the breadth of medical conditions the patients in a facility have; however, KDHE does not determine which of the two categories a facility is in, but allows hospitals to self-select. Neither type of hospital is required by Kansas statutes to maintain an emergency department. Kansas statutes also do not make a distinction between the two hospital categories regarding the amount of inpatient care. Examples of special hospitals in Kansas include orthopedic hospitals, heart hospitals, surgical hospitals, rehabilitation hospitals, and mental health hospitals. Children’s and women’s hospitals are relatively common in the U.S., although none are located in Kansas.

In Kansas, fifty hospitals are licensed as general hospitals. Twenty are licensed as special hospitals, and 83 are licensed as critical access hospitals. A number of Kansas hospitals are also designated as sole community hospitals (SCH) by Medicare. These hospitals must be in locations that are 35 miles from similar hospitals or must be isolated from similar hospital by severe weather or topography. Many of the SCH’s in Kansas are licensed as CAH’s. The SCH designation results in some additional Medicare revenue.

The location of a specialty hospital in a community with a SCH could result in the loss of the extra Medicare revenue if the specialty hospital is in the same State licensing category. The determination by Medicare of what constitutes a “similar hospital” is not clearly defined and appears to rely heavily on State licensing categories.

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4 CMS. Publication 10, Section 200, Revision 479, p. 19.

5 Ibid. Section 210, Revision 559, p. 21.3a.

6 K.S.A. 65-425 (j).

7 K.S.A. 65-425 (a).

8 K.S.A. 65-468 (f).

9 K.S.A. 65-425 (b)

## Specialty Hospitals in Kansas

The types of hospitals at issue in this report, and that have generated so much policy interest nationally in the last few years, do not coincide with the licensure class of special hospitals in Kansas. A KHI issue brief released in December 2003 observes that:

“specialty hospitals provide services in a single medical specialty, such as cardiology or orthopedics. These hospitals however are not the same as psychiatric, women’s or children’s hospitals. Those types of hospitals offer a range of services. They are also different from ambulatory surgical centers, which are restricted by Federal regulation from offering inpatient services, and do not focus on a particular specialty.” (Bentley and Allison, 2003)

Typically, specialty hospitals in Kansas offer a significantly narrower range of services than are found in general hospitals. For instance, specialty hospitals do not generally offer emergency department services, nor do they provide obstetrical care.

Eleven hospitals in Kansas meet the definition outlined by KHI; however, four of these eleven are currently licensed as general hospitals.

In addition to the various definitions, specialty hospitals are organized under three basic operational structures: national management chains that partner with local physicians, joint ventures between a general hospital and local physicians, and physician groups that go it alone. In Kansas, 45 percent of specialty hospitals are joint ventures with management companies, 22 percent are joint general hospital-physician operations, and 33 percent are solely physician-owned.

## Potential Definitions of Specialty Hospitals

A review of the literature shows multiple definitions of specialty hospitals, and that Federal and state definitions do not always agree. Definitions also vary across the many studies of specialty hospitals. The General Accounting Office – now known as the Government Accountability Office (GAO) – has conducted studies which describe specialty hospitals as those that predominately treat certain diagnoses or perform certain procedures. The GAO (October 2003) classified a specialty hospital if “the data indicated that two-thirds or more of its inpatient claims were in one or two major diagnosis categories (MDC), or two-thirds or more of its inpatient claims were for surgical diagnosis related groups (DRG’s).” (p.2)

In its report to Congress, MedPAC established these criteria to define physician-owned specialty hospitals as:

- “physician-owned,
- “specialize in certain services,
- “at least 45 percent of the Medicare cases must be in cardiac, orthopedic, or surgical services,
- “or at least 66 percent must be in two major diagnostic categories (MDC’s), with the primary one being cardiac, orthopedic, or surgical cases.” (MedPAC, 2005, p. 4)

The Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA), provides this definition of a specialty hospital: “For the purposes of this section, except as provided in subparagraph (B), the term “specialty hospital” means a subsection (d) hospital (as defined in section 1886(d)(1)(B) that is primarily or exclusively engaged in the care and treatment of one of the following categories:

“(i) Patients with a cardiac condition.

“(ii) Patients with an orthopedic condition.

“(iii) Patients receiving a surgical procedure.

“(iv) Any other specialized category of services that the Secretary designates as inconsistent with the purpose of permitting physician ownership and investment interests in a hospital under this section.”<sup>10</sup>

In its final report and accompanying recommendations, HHS uses a general definition of specialty hospitals containing core elements from the MedPAC and MMA definitions: “hospitals exclusively or primarily engaged in caring for one of the following categories of patients: patients with a cardiac condition or an orthopedic condition; or patients receiving a surgical procedure.” (CMS Press Release, August 8, 2006)

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10 MMA, Section 507, Clarifications to Certain Exceptions to Medicare Limits on Physician Referrals, (B) Definition – Section 1877(h) (42 U.S.C. 1395nn(h)) amended.

## Other States' Definitions

KHPA surveyed other states concerning their definitions of general and special or specialty hospitals and found most of them make no distinction. This may occur, because in many cases, these states have a certificate of need requirement that precludes the building of any new hospital without a review by a committee and justification of the need for a new hospital in the community.

South Dakota, a state that has twelve specialty hospitals, distinguishes between general and specialized hospitals by the number of categories of service checked on the licensing application. A facility that checks all four (medical, surgical, obstetrical, and emergency services) is automatically classified as a general hospital. Arkansas, which has three specialty hospitals, requires general hospitals to provide obstetrical care in order to be licensed in that category. Other states are like Kansas in that they allow the applicant to select the category.

## Discussion

State licensure laws do not clearly reflect the classes of hospitals in the State. While this present lack of correspondence does not currently affect Medicare payments to hospitals in Kansas, some supplemental Medicare payments may hinge on the proximity of facilities designated as general hospitals by the State licensing process. More cleanly distinguishing between general and specialty hospitals could facilitate better targeting of future State policies, and could ensure that Medicare payment policies that depend on State licensure rules have the intended impact.

The recommendations below are designed to accomplish those directives, drawing directly on MedPAC's definition of a specialty hospital, which was in large part also used in the MMA to apply the moratorium on Medicare payments to the new specialty hospitals.

## Recommendations

- I. *To monitor the impact of specialty hospitals and other facilities on the quality and cost of care in Kansas, and to provide information necessary to apply service-related licensing criteria, data to support ongoing analysis and monitoring should be collected and maintained by KHPA. This data should include information that specifically identifies each hospital, its license category and the names of each owner. Hospitals which are designated as SCH's by Medicare should be required to report this status as a part of this data collection effort to allow the State to monitor the potential impact of licensing new hospitals. (delete this first recommendation per Ned Holland's suggestion.)*
- II. State hospital licensure statutes should include the following criteria in defining special hospitals:
  - a. "physician owned,
  - b. "specialize in certain services,
  - c. "at least 45 percent of the Medicare cases must be in cardiac, orthopedic, or surgical services
  - d. "or at least 66 percent must be in two major diagnostic categories (MDC's), with the primary one being cardiac, orthopedic, or surgical cases." (MedPAC, 2005, p. 4)

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